UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 May 2006*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *13-23,33,34 and 51-73* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *13-23,33,34 and 51-73* is/are rejected.

7)☒ Claim(s) *15, 33,53-72* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *14 May 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05-04-

06 has been entered.

Response to Amendment

2.   This office action is in response to communications filed 05/04/06. Claims 1-12,

24-32, 35-50 are cancelled. Claims 13-23, 33-34 are now considered but in previous

action were withdrawn due to previous restriction (see below to Election/Restriction

section). Claims 51, 52, 61, 62 are amended. Claims 53-60, 63-72 are previously

presented. Claim 73 is new.

Response to Arguments

3.   Applicant's arguments with respect to claims have been considered but are moot

in view of the new ground(s) of rejection.

Election/Restrictions

4.   The traversal of election was persuasive for claims 58-60, 68-70. The claims

now contain material similar to independent claims 13 and 33. The previous restriction

elected on 9/27/06 by Jen Jenkins through a phone call has now been withdrawn.

Claims 13-23, 33-34 are now being considered.

Claim Objections

5.   Claims 15, 33 are objected to because of the following informalities:

        Claim 15, Page 3, line 1 recites, "other types of program" that is assumed to be –

other types of programs--.

        Claim 33, Page 5, recites, "program s" that is assumed to be –programs--.

        Appropriate correction is required.

6.   Claims 53-60 are objected to under 37 CFR 1.75(c) as being in improper form

because a multiple dependent claim may refer to the alternative to only one set of

claims. Note that claims 51 and 52 are a method and a computer program product

respectively.   See MPEP § 608.01(n).

7.   Claims 63-72 are objected to under 37 CFR 1.75(c) as being in improper form

because a multiple dependent claim may refer to the alternative to only one set of

claims. Note that claims 61 and 62 are a method and a computer program product

respectively.   See MPEP § 608.01(n).

8.   Claim 61, 62 objected to because of the following informalities: Claims 61 and

62 recite "at least first slice" and then recite "the first slice" and "said first slice." The

Office assumes "the first slice" and "said first slice" to be --the at least first slice-- and --

said at least first slice--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

9.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of
> making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the
> art to which it pertains, or with which it is most nearly connected, to make and use the same and shall
> set forth the best mode contemplated by the inventor of carrying out his invention.

10.   Claims 55 and 65 are rejected under 35 U.S.C. 112, first paragraph, as failing to

comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably convey to

one skilled in the relevant art that the inventor(s), at the time the application was filed,

had possession of the claimed invention. The specification does not provide any details

of first data slice continues to be present in the browse mode window irrespective of

other data slices added to the browse mode window as long as the television program

being displayed remains unchanged. These claims were not filed with the disclosure on

5/14/2001.

11.   Claim 73 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply

with the written description requirement. The claim(s) contains subject matter which

was not described in the specification in such a way as to reasonably convey to one

skilled in the relevant art that the inventor(s), at the time the application was filed, had

possession of the claimed invention. The specification does not provide any details of

adding slices to the EPG without changing a size of the retrieved slice and each

additional slice.

Claim Rejections - 35 USC § 102

12.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13.   Claims 13-16, 23, 33, 34 are rejected under 35 U.S.C. 102(e) as being

anticipated by Ward, III et al (US 6,756,997 and hereafter referred to as "Ward").

Regarding Claims 13 and 23, Ward discloses in a system that includes a

processor (Column 5, lines 13-38) and a display device (Figure 1, 10, Column 2, lines

60-66) on which video program can be displayed (Column 6, lines 54-56), a method for

displaying an electronic program guide (EPG) in a predictive manner to a viewer by way

of the display device (Column 27, lines 65-67, Column 28, lines 1-7, Column 29, lines 7-

39), and

a computer program product is necessarily included as functions are performed

or functions for implementing, in a system that includes a processor (Column 5, lines

13-38) and a display device (Figure 1, 10, Column 2, lines 60-66) on which video

program can be displayed (Column 6, lines 54-56), a method for displaying an

electronic program guide (EPG) in a predictive manner to a viewer by way of the display

device (Column 27, lines 65-67, Column 28, lines 1-7, Column 29, lines 7-39),

the computer program product comprising a computer readable medium (Column

5, lines 13-20) which necessarily includes software or instructions to perform functions

for implementing a method as the process executes the method meets the limitations

carrying computer executable instructions for implementing the method, wherein the

computer executable instructions when executed by the processor cause the system to

perform the acts (Column 5, lines 13-45) described below.

the method and computer program product comprising the acts of:

retrieving an EPG comprising a plurality of data slices representing a plurality of

programs (Column 7, lines 7-14, Figure 1, Figure 3, Figure 4A), predicting at least one

program of the plurality of programs at the particular time or choosing the watch/record

section of the EPG to determine a program to watch such as a weekly program or

selecting the EPG Grid Guide and displaying the channels and programming of the

EPG predictions first or selecting theme guides based on the profile (Figure 6, Column

30, lines 43-59, Column 31, lines 9-17, 46-52); based on the act of predicting, inserting

at least one data slice representing the at least one program into one or more display

screen associated with the EPG (Figure 1, Figure 3, Figure 4A, Figure 6, Column 30,

lines 43-59); and in response to input from the viewer selecting a particular one of the

one or more display screens (Figure 6, Schedule), displaying the selected display

screen (Figure 1), including the at least one data slice to the viewer using the display

device to show on the Watch/Record Schedule the data slice of at least one program

that is preferred or to show a guide which automatically tunes the Grid to have the

preferred program/data slice as first slice on the display (Figure 6, Column 30, lines 43-

59).

Regarding Claim 33, Ward discloses in a computer system or any system that

can process and manipulate information (Column 5, lines 13-38) having a graphical

user interface including a display device (Figure 1, 10, Figure 1, 10, Column 2, lines 60-

66) and an input device (Figure 2, Column 8, lines 53-65), a method of providing and

selecting an EPG in a predictive manner to a viewer by way of the display device

(Figure 6, Column 30, lines 43-59), comprising the steps of:

retrieving an EPG comprising a plurality of data slices representing a plurality of

programs (Figure 1, Figure 3, Figure 4A); displaying at least one of the plurality of data

slices on the display device (Figure 1, Figure 3, Figure 4A); receiving an EPG selection

signal specifying that the computer system is to predict at least one program of the

plurality of program that the viewer is more likely to watch at a particular time than

others of the plurality of programs at the particular time or choosing the watch/record

section of the EPG to determine a program to watch such as a weekly program or

selecting the EPG Grid Guide and displaying the channels and programming of the

EPG predictions first or selecting theme guides based on the profile (Figure 6, Column

30, lines 43-59, Column 31, lines 9-17, 46-52); in response to receiving the EPG

selection signal predicting the at least one program of a plurality of programs that the

viewer is more likely to watch (Figure 1, Figure 6, Column 30, lines 43-59, Column 31,

lines 9-17, 46-52); and in response to predicting the at least one program to the viewer

using the display device (Figure 1, Figure 6, Column 30, lines 43-59, Column 31, lines

9-17, 46-52).

Regarding Claim 14, Ward discloses all the limitations of Claim 13. Ward

discloses that the retrieving act comprises retrieving the EPG from a remote data

source (Column 8, lines 7-22).

Regarding Claim 15, Ward discloses all the limitations of Claim 13. Ward

discloses retrieving stored demographic information associated with the viewer

((Column 27, lines 65-67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-42) or

analyzing the stored demographic information to identify at least one type of program

that a viewer is more likely to watch than other types of programs or to use viewer

characteristics as part of the profile to customize the guide for sports shows (Column

27, lines 65-67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-59); based upon

the identified type of program, analyzing the available programs to identify at least one

program of the plurality of program that a viewer is more likely to watch at a particular

time than others of the plurality of programs at the particular time (Column 27, lines 65-

67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-42).

Regarding Claim 16, Ward discloses all the limitations of Claim 13. Ward

discloses retrieving stored data associated with the viewing preference of the viewer

(Column 27, lines 65-67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-42) or analyzing the stored data to identify at least one type of program that a viewer is more likely to watch than other types of programs or to use viewer characteristics as part of the profile to customize the guide for sports shows (Column 27, lines 65-67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-59, Column 31, lines 32-57); based upon the identified type of program, analyzing the available programs to identify at least one program of the plurality of program that a viewer is more likely to watch at a particular time than others of the plurality of programs at the particular time (Column 27, lines 65-67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-42, Column 31, lines 32-57).

Regarding Claim 34, Ward discloses all the limitations of Claim 33. Ward discloses based on the step of predicting, inserting at least one data slice representing the at least one program into one or more display screen associated with the EPG (Figure 1, Figure 3, Figure 4A, Figure 6, Column 30, lines 43-59); and in response to input from the viewer selecting a particular one of the one or more display screens (Figure 6, Schedule), displaying the selected display screen (Figure 1), including the at least one data slice to the viewer using the display device to show on the Watch/Record Schedule the data slice of at least one program that is preferred or to show a guide which automatically tunes the Grid to have the preferred program/data slice as first slice on the display (Figure 6, Column 30, lines 43-59, Column 31, lines 9-17, 46-52).

14.   Claims 51, 52, 53-54,56/51, 53-54,56/52, 63-64,66,71,72/61, 63-64,66,71,72/62,

73 are rejected under 35 U.S.C. 102(e) as being anticipated by Akhavan et al (US

2005/0229210 and hereafter referred to as "Akhavan").

Regarding Claims 51 and 52, Akhavan discloses a method (Figure 4A, Figure

4B) for display of electronic program guide (EPG) information (Figure 1, 90) to a viewer

while viewing a television (TV) program (Figure 1, 80) wherein the EPG information is

organized in various slices each contain at least a channel identifier and a program

element for a given time element (Figure 1, Figure 5, 94, 91, 96), and wherein the

viewer selectively determines how to expand the program guide information when

initially presented to the viewer in browse mode so as to present additional program

guide information (Figure 4A, Figure 4B, Figure 7, Figure 8) and

a computer program product or software (Page 2, paragraph 0030) for

implementing a method (Figure 4A, Figure 4B) for display of EPG information (Figure 1,

90) to a viewer while viewing a TV program (Figure 1, 80) wherein the EPG information

is organized in various slices each contain at least a channel identifier and a program

element for a given time element (Figure 1, Figure 5, 94, 91, 96), and wherein the

viewer selectively determines how to expand the program guide information when

initially presented to the viewer in browse mode so as to present additional program

guide information (Figure 4A, Figure 4B, Figure 7, Figure 8),

the method and the computer program product comprising:

a microprocessor, which includes software to determine the EPG settings to

implement the EPG grid with the TV program (Page 2, paragraph 0030), necessarily

includes memory to store software and instructions or commands meets the limitation a

computer readable medium for storing computer executable instruction for implementing

the method; and wherein the software which is used to implement the method (Page 2,

paragraph 0030) inherently is a program with instructions that make hardware work and

or program code meets the limitation computer executable instructions or software are

comprised of computer program code means for performing the following steps:

a step for retrieving from an EPG at least a first slice such as channel 2, channel

4, or channel 6 information (Figure 5, Figure 6, Figure 1), a step for displaying in browse

mode the retrieved slice in a window that is simultaneously present for viewing with a

displayed TV program (Figure 5, Figure 6); in response to a viewer activated scrolling

command scrolling toward (up or down) a new slice that is not currently viewable to the

view while continuing to display the retrieved slice (Page 3, paragraph 0034, Figure 2,

36a, 36b), a step for adding one additional slice of program guide information to the

browse mode window corresponding to the new slice that is not currently viewable

(Page 4, paragraph 0040); and a step for selectively continuing to add another

additional slice of program guide information to the browse mode using a viewer

activated scrolling command or to add another channel instead of the currently viewed

channel (Figure 5, Figure 6, Page 4, paragraph 0040), while continuing to display the

retrieved slice until a pre-defined number of slices is reached (Figure 1, Figure 5, Figure

6).

Regarding Claims 61 and 62, Akhavan discloses a method (Figure 4A, Figure

4B) for display of electronic program guide (EPG) information (Figure 1, 90) to a viewer

while viewing a television (TV) program (Figure 1, 80) wherein the EPG information is

organized in various slices each contain at least a channel identifier and a program

element for a given time element (Figure 1, Figure 5, 94, 91, 96), and wherein the

viewer selectively determines how to expand the program guide information when

initially presented to the viewer in browse mode so as to present additional program

guide information (Figure 4A, Figure 4B, Figure 7, Figure 8) and

a computer program product or software (Page 2, paragraph 0030)for

implementing a method (Figure 4A, Figure 4B) for display of EPG information (Figure 1,

90) to a viewer while viewing a TV program (Figure 1, 80) wherein the EPG information

is organized in various slices each contain at least a channel identifier and a program

element for a given time element (Figure 1, Figure 5, 94, 91, 96), and wherein the

viewer selectively determines how to expand the program guide information when

initially presented to the viewer in browse mode so as to present additional program

guide information (Figure 4A, Figure 4B, Figure 7, Figure 8),

the method and the computer program product comprising:

a microprocessor, which includes software to determine the EPG settings to

implement the EPG grid with the TV program (Page 2, paragraph 0030), necessarily

includes memory to store software and instructions or commands meets the limitation a

computer readable medium for storing computer executable instruction for implementing

the method; and wherein the software which is used to implement the method (Page 2,

paragraph 0030) inherently is a program with instructions that make hardware work and

or program code meets the limitation computer executable instructions or software are

comprised of computer program code means for performing the following steps:

a step for retrieving from an EPG at least a first slice such as channel 2, channel

4, channel 6 (Figure 5, Figure 6, Figure 1), a step for displaying in browse mode the

retrieved slice in a window that is simultaneously present for viewing with a displayed

TV program (Figure 5, Figure 6); in response to a viewer activated scrolling command

scrolling toward (right or left) a new time element that is not currently visible to the view

while continuing to display the retrieved slice (Page 3, paragraph 0034, Figure 2, 34a,

34b), a step for adding one or more time elements that are simultaneous with the

browse mode window (Figure 1, Figure 5, Figure 6) in addition to the at least fist slice of

program guide information and the time element for the at least first slice of program

guide information (Figure 1, Figure 5, Figure 6, Page 4, paragraph 0040); and a step for

selectively continuing to add another additional slice of program guide information to the

browse mode using a viewer activated scrolling command or to add another channel

instead of the currently viewed channel (Figure 5, Figure 6, Page 4, paragraph 0040),

while continuing to display the retrieved slice until a pre-defined number of slices is

reached (Figure 1, Figure 5, Figure 6) and wherein each slice of program guide

information that is added for a particular time element so that the viewer is allowed to

scroll the brows window on a time period by time period basis (Figure 1, Figure 5,

Figure 6, Page 3, paragraphs 0034-0037, Page 4, paragraph 0040).

Regarding Claims 53/51, 53/52, 63/61, 63/62, Akhavan discloses all the

limitations of Claims 51, 52, 61, and 62 respectively. Akhavan disclose selectively

removing from the browse mode window a slice of program guide information in response to a viewer activate command or removing the last or first slice based on the maximum number of viewable slices when the viewer scrolls vertically or horizontally (Figure 1, Figure 5, Figure 6, Page 3, paragraphs 0034-0037, Page 4, paragraph 0040).

Regarding Claims 54/51, 54/52, 64/61, 64/62, Akhavan discloses all the limitations of Claims 51, 52, 61, and 62 respectively. Akhavan discloses that the EPG may receive signals from a hard drive or remote data source or from memory or local data source (Page 2, paragraph 0026, 0030).

Regarding Claims 56/51, 56/52, 66/61, 66/62, Akhavan discloses all the limitations of Claims 51, 52, 61, and 62 respectively. Akhavan discloses the data slice are displayed in number order based on the channel identifier of each data slice added to the browse mode window for display (Figure 5, Figure 6).

Regarding Claims 71/61, 71/62, Akhavan discloses all the limitations of Claims 61, 62 respectively. Akhavan discloses that the first slice of program guide information in connection with a single column headed by a given time element (Figure 5, 96, Figure 6).

Regarding Claims 72/71/61, 72/71/62, Akhavan discloses all the limitations of Claims 71/61, 71/62 respectively. Akhavan discloses each time element that is added is formatted at the head of a separate column that is added to the browse mode window so that each slice of program guide information that is added is added to a column headed by a time element (Figure 5, 96, Figure 6).

Regarding Claims 73, Akhavan discloses all the limitations of Claim 51. Akhavan discloses the display for the data slice sizes to be the same or each additional slice is added without changing a size of the retrieved slice and each additional slice that is displayed with the retrieved slice (Figure 1, Figure 5, Figure 6).

Claim Rejections - 35 USC § 103

15.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

16.   Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ward in view of Schaffer et al (US 6,704,931 and hereafter referred to as "Schaffer").

Regarding Claim 17, Ward discloses all the limitations of Claim 13. Ward is silent on at least one data slice has a format different from a substantially all other data slices inserted within the one or more display screens. Schaffer discloses an EPG that recommends or predicts programs of interest to a user (Figure 1). Schaffer discloses at least one data slice has a format different from a substantially all other data slices inserted within the one display screen (Figures 4A-C). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ward to include at least one data slice has a format different from a substantially all other data slices inserted within the one display screen (Figures 4A-C) as taught by

Schaffer in order to identify programs of interest more efficiently (Column 1, lines 53-64)

as disclosed by Schaffer.

17.   Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ward in

view of Akhavan.

Regarding Claim 18, Ward discloses all the limitations of Claim 13. Ward

discloses that the EPG display screen can be an overlay or only display a portion of the

screen (Column 7, lines 8-10). Ward is silent on at least one of the one or more display

screens comprises an upper portion and a lower portion, the lower portion comprising

one or more plurality of data slices. Akhavan disclose at least one of the one or more

display screens comprises an upper portion and a lower portion, the lower portion

comprising one or more plurality of data slices (Figure 1, Figure 5, Figure 6). Therefore,

it would have been obvious to one of ordinary skill in the art at the time the invention

was made to modify Ward to include at least one of the one or more display screens

comprises an upper portion and a lower portion, the lower portion comprising one or

more plurality of data slices (Figure 1, Figure 5, Figure 6) as taught by Akhavan in order

to provide a continuous uninterrupted viewing of a program (Page 1, paragraph 0008)

as disclosed by Akhavan and to provide a viewer with another display of programming

and grid programming.

18.   Claim 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Ward in view of Akhavan as applied to claim 18 above, and further in view of

Rashkovskiy et al (US 2004/0034867 and hereafter referred to as "Rashkovskiy").

        Regarding Claim 19, Ward and Akhavan disclose all the limitations of Claim 18.

Ward discloses that the EPG data can be in any position or location (Column 3, lines 8-

12, Column 7, lines 8-14). Akhavan discloses displaying more detailed data slice or info

on the top portion (Figure 9). Ward and Akhavan are silent on discloses inserting

comprises inserting at least one data slice into the upper portion, the at least one data

slice being a copy of the plurality of data slices incorporated in the lower portion.

Rashkovskiy discloses inserting comprises inserting at least one data slice into the first

or left portion, the at least one data slice being a copy of the plurality of data slices

incorporated in the second or right portion (Figure 1). It would have been obvious to

place the EPG portions of Rashkovskiy in different positions: upper (second portion)

and lower (first portion) as the EPG of Ward allows for different positions and locations

of his windows and the EPG of Akhavan has an upper and lower section. Therefore, it

would have been obvious to one of ordinary skill in the art at the time the invention was

made to modify Ward in view of Akhavan to include inserting comprises inserting at

least one data slice into the left or lower portion, the at least one data slice being a copy

of the plurality of data slices incorporated in the right or upper portion (Figure 1) as

taught by Rashkovskiy in order to allow a user to find a program more easily without

extensive scrolling (Page 1, paragraph 0005) as disclosed by Rashkovskiy.

Regarding Claim 20, Ward, Akhavan and Rashkovskiy disclose all the limitations

of Claim 19. Ward discloses that at least one data slice is substantially continually

maintained with the at least one program (Figure 6, Column 31, lines 7-57).

Regarding Claim 21, Ward, Akhavan and Rashkovskiy disclose all the limitations

of Claim 20. Ward discloses that the data slices comprise a numerical channel element

(Figure 1, Figure 5). Akhavan discloses the data slices comprise a numerical channel

element (Figure 1, Figure 5, Figure 6) and the data slices in the lower portion are

capable of being examined by the viewer in numerical order of the numerical channel

elements (Figure 1, Figure 5, Figure 6). Rashkovskiy discloses the data slices in the left

portion which equivalent to the lower portion are capable of being examined by the

viewer as the at least one data client in the second portion or upper portion remains

unchanged (Page 2, paragraph 0030). Note: Ward allows for the data slices to be

placed in any position including upper and lower portions of Akhavan and left and right

portions of Rashkovskiy. It is necessarily included that the portions of Rashkovskiy to

be positioned in lower and upper portions. Rashkovskiy discloses that the number of

programs for a category or subcategory such as current listings and favorite listings

(Figure 1) causes a scroll feature to be added to the portions or category and

subcategory (Figure 6). Rashkovskiy discloses that the two portions are separate

(Figure 1) and that a user can use the entries in either column to get more information

(Figure 5). It is necessarily included if the two portions are separate, that any scrolling

or any selection of an entry for more information is subject to only that portion/column or

category not the subcategory.

Regarding Claim 22, Ward, Akhavan and Rashkovskiy disclose all the limitations

of Claim 20. Rashkovskiy discloses that the number of programs for a category or

subcategory such as current listings and favorite listings (Figure 1) causes a scroll

feature to the portions (Figure 6). Rashkovskiy discloses that the number of programs

for a category or subcategory such as current listings and favorite listings (Figure 1)

causes a scroll feature to be added to the portions or category and subcategory (Figure

6). Rashkovskiy discloses that the two portions are separate (Figure 1) and that a user

can use the entries in either column to get more information (Figure 5). It is necessarily

included if the two portions are separate, that any scrolling or any selection of an entry

for more information is subject to only that portion/column or subcategory not the

category.

19.   Claims 55/51, 55/52, 65/61, 65/62 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Akhavan in view of Schein et al (US 2002/0129366 and hereafter

referred to as "Schein") and Ward.

Regarding Claims 55/51, 55/52, 65/61, 65/62, Akhavan discloses all the

limitations of Claims 51, 52, 61, and 62 respectively. Akhavan discloses that a first data

slice presents channel and program information for the television program being

displayed to the viewer (Figure 5, Figure 6, Figure 5A). Akhavan is silent on the first

data slice continues to be present in the browse mode window irrespective of other data

slices added to the browse mode window as long as the television program being

displayed remains unchanged. Schein discloses displaying a plurality of data slices

(Figure 1, 228) simultaneously with the currently tuned broadcast program (Figure 1, 220, 222, 224). Schein discloses the first data slice (Figure 1, 222, 224) is displayed as other slices are added or scrolled towards (Figure 7, Figure 8, Page 7, paragraphs 0112-0115). Schein discloses that the first data slice continues to be present in the browse mode window irrespective of other data slices added to the browse mode window as long as the television program being displayed remains unchanged (Figure 1, 220, 222, 224, Figures 7-16). Ward discloses a displaying EPG information to a viewer while viewing a television program (Column 7, lines 7-14) and allows a viewer to retrieve an at least first slice and scroll toward a slice not viewable to the viewer (Column 10, lines 18-28). Ward discloses that the EPG data can be in any position or location (Column 3, lines 8-12, Column 7, lines 8-14).

Therefore, it would have been obvious to one of ordinary skill in the art to modify Akhavan to include the first data slice continues to be present in the browse mode window irrespective of other data slices added to the browse mode window as long as the television program being displayed remains unchanged (Figure 1, 220, 222, 224, Figures 7-16) as taught by Schein in order to provide an interface that mange an intelligent, user friend interface to the information available (Page 1, paragraph 0005) as disclosed by Schein. Therefore, the combination of Akhavan, Schein and Ward allows the user to customize the EPG so that the EPG can be positioned in any form while watching a television program (Column 3, lines 8-12, Column 7, lines 8-14) as taught by Ward in order to provide a more interactive EPG to users (Column 1, lines 44-51) as disclosed by Ward.

20.   Claims 57-60/51, 57-60/52, 67-70/61, 67-70/62 are rejected under 35 U.S.C.

103(a) as being unpatentable over Akhavan in view of Ward.

Regarding Claims 57/51, 57/52, 67/61, 67/62, Akhavan discloses all the

limitations of Claims 51, 52, 61, and 62 respectively. Akhavan is silent on the pre-

defined maximum number of data slices that can be added to the browse mode window

is defined by viewer activated input. Ward discloses a displaying EPG information to a

viewer while viewing a television program (Column 7, lines 7-14) and allows a viewer to

retrieve an at least first slice and scroll toward a slice not viewable to the viewer

(Column 10, lines 18-28). Ward discloses that a user can select the size of windows for

the EPG (Column 14, lines 12-17, Column 3, lines 9-12). It is necessarily included that

if a user can select the size of the windows that the user defines the maximum number

of data slices that can be added to the browser window as the EPG grid can occupy

only a portion of the screen while showing the video to the viewer (Column 7, lines 7-

14). Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to modify Akhavan to include a pre-defined maximum number

of data slices that can be added to the browse mode window is defined by viewer

activated input (Column 14, lines 12-17, Column 3, lines 9-12, Column 7, lines 7-14) as

taught by Ward in order to provide a more interactive EPG to users (Column 1, lines 44-

51) as disclosed by Ward.

Regarding Claims 58/51, 58/52, 68/61, 68/62, Akhavan discloses all the

limitations of Claims 51, 52, 61, and 62 respectively. Akhavan is silent on at least on

data slice added to the browse mode window in response to a viewer activated

command selected by performing as step for predicting that the viewer is more likely to

view the program identified by the data slice than others. Ward discloses displaying an

electronic program guide (EPG) in a predictive manner to a viewer by way of the display

device (Column 27, lines 65-67, Column 28, lines 1-7, Column 29, lines 7-39). Ward

discloses displaying a plurality of data slices while watching a TV program or a browse

mode EPG (Column 7, lines 7-14, Figure 1, Figure 3, Figure 4A). Ward discloses at

least on data slice added to the browse mode window in response to a viewer activated

command selected by performing as step for predicting that the viewer is more likely to

view the program identified by the data slice than others or choosing the watch/record

section of the EPG to determine a data slice identifying program to watch such as a

weekly program or selecting the EPG Grid Guide and displaying the channels and

programming of the EPG predictions first or selecting theme guides based on the profile

(Figure 6, Column 30, lines 43-59, Column 31, lines 9-17, 46-52). Therefore, it would

have been obvious to one of ordinary skill in the art at the time the invention was made

to modify Akhavan to include at least on data slice added to the browse mode window in

response to a viewer activated command selected by performing as step for predicting

that the viewer is more likely to view the program identified by the data slice than others

(Figure 6, Column 30, lines 43-59, Column 31, lines 9-17, 46-52) as taught by Ward in

order to provide a more interactive EPG to users (Column 1, lines 44-51) as disclosed

by Ward.

Regarding Claim 59/58/51, 59/58/52, 69/68/61, 69/68/62, Akhavan and Ward disclose all the limitations of Claims 58/51, 58/52, 68/61, and 68/62 respectively. Ward discloses retrieving stored demographic information associated with the viewer (Column 27, lines 65-67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-42) or analyzing the stored demographic information to identify at least one type of program that a viewer is more likely to watch than other types of programs or to use viewer characteristics as part of the profile to customize the guide for sports shows (Column 27, lines 65-67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-59); based upon the identified type of program, analyzing the available programs to identify at least one program of the plurality of program that a viewer is more likely to watch at a particular time than others of the plurality of programs at the particular time (Column 27, lines 65-67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-42).

Regarding Claim 60/58/51, 60/58/52, 70/68/61, 70/68/62, Akhavan and Ward disclose all the limitations of Claims 58/51, 58/52, 68/61, and 68/62 respectively. Ward discloses retrieving stored data associated with the viewing preferences of the viewer (Column 27, lines 65-67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-42) or analyzing the stored data to identify at least one type of program that a viewer is more likely to watch than other types of programs or to use viewer characteristics as part of the profile to customize the guide for sports shows (Column 27, lines 65-67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-59, Column 31, lines 32-57); based upon the identified type of program, analyzing the available programs to identify at least one program of the plurality of program that a viewer is more likely to watch at a particular

time than others of the plurality of programs at the particular time (Column 27, lines 65-

67, Column 28, lines 1-3, 8-10, 53-64, Column 30, lines 31-42, Column 31, lines 32-57).

Double Patenting

21.   A rejection based on double patenting of the "same invention" type finds its
support in the language of 35 U.S.C. 101 which states that "whoever invents or
discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis
added). Thus, the term "same invention," in this context, means an invention drawn to
identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re
Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164
USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by
canceling or amending the conflicting claims so they are no longer coextensive in
scope. The filing of a terminal disclaimer <u>cannot</u> overcome a double patenting rejection
based upon 35 U.S.C. 101.

22.   Claims 13-23 are provisionally rejected under 35 U.S.C. 101 as claiming the

same invention as that of claims 1-11 of copending Application No. 11/241,662. This is

a <u>provisional</u> double patenting rejection since the conflicting claims have not in fact

been patented.

23.   The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees. A nonstatutory
obviousness-type double patenting rejection is appropriate where the conflicting claims
are not identical, but at least one examined application claim is not patentably distinct
from the reference claim(s) because the examined application claim is either anticipated
by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140
F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29
USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

24.   Claim 33 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 11/241,662 in view of Ward.   Although the conflicting claims are not identical, they are not patentably distinct from each other because they are broader in scope and therefore would unduly extend the time wise monopoly afforded to the other claims.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The instant application's limitations of "In a computer system having a graphical user interface including a display device, a method of providing and selecting an electronic program guide in a predictive manner to a viewer by way of the display device" is met by "In a computer system that includes a display device, a method of displaying an electronic program guide in a predictive manner to a viewer by way of the display device" of Application 11/241,662.

The instant application's limitations of "retrieving an electronic program guide comprising a plurality of data slices representing a plurality of programs" is met by

"retrieving an electronic program guide comprising a plurality of data slices representing a plurality of programs" of Application 11/241,662.

The instant application's limitations of "receiving an electronic program guide selection signal specifying that the computer system is to predict at least one program of the plurality of programs that a viewer is more likely to watch at a particular time than others of the plurality of programs at the particular time; in response to receiving the electronic program guide selection signal, predicting the at least one program of the plurality of programs that the viewer is more likely to watch" is met by "predicting at least one program of the plurality of programs that a viewer is more likely to watch at a particular time than others of the plurality of program at the particular time" of Application 11/241,662 as the system makes the prediction of the programs at a particular time based on the electronic program guide.   Application 11/241,662's limitation is broader.

The instant application's limitations of "in response to predicting the at least one program of the plurality of programs, displaying the at least one data slice representing the at least one program to the viewer using the display device" is met by "based on the act of predicting, inserting at least one data slice representing the at least one program into one or more display screen associated with the electronic program guide, in response to input from the viewer selecting a particular one of the one or more display screens, displaying the selected display screen, including the at least one data slice, to the viewer using the display device" of Application 11/241,662 as a data slice on the

display device can be one display screen and Application 11/241,662 recites one or

more display screens which are obvious variations.

The instant application is missing "in a system that includes a processor". Ward

discloses a processor (Column 5, lines 13-38). It would be obvious to modify the instant

application to include the limitation found in Application 11/241,662 as it is taught by

prior art.

The instant application's limitation of "displaying at least one of the plurality of

data slices on the display device" is an additional feature. It would have been obvious

to modify Application 11/241,662 to include the limitations as prior art discloses the

limitations. Ward discloses displaying at least one of plurality of slices (Figure 1, Figure

3).

This is a <u>provisional</u> obviousness-type double patenting rejection.

Conclusion

25.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. Berezowski et al (US 6,064,376 and hereafter referred to as
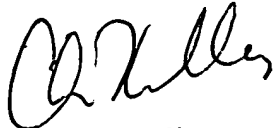
"Berezowski").

Berezowski discloses displaying EPG listings on a lower portions and video

information on an upper portion (Figures 5-9). Berezowski discloses changing

the size of the video section to allow for additional data slices (Figure 5).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Farzana E. Hossain whose telephone number is 571-272-5943. The examiner can normally be reached on Monday to Friday 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FEH
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